

Federal Court



Cour fédérale

Date: 20230524

Docket: IMM-4062-22

Citation: 2023 FC 726

Toronto, Ontario, May 24, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

**GULAMZHAN TURSUNOV
KHALOSBAY DODAYEV**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, citizens of Kazakhstan, claimed fear of persecution due to their identity as Tajiks, an ethnic minority in Kazakhstan. They seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated April 7, 2022, which dismissed their appeal of the decision of the Refugee Protection Division [RPD] dated October 29, 2021. The RPD found that the Applicants are neither *Convention* refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [*IRPA*]. The RPD and the RAD determined that the Applicants have a viable internal flight alternative [IFA] in Nur-Sultan, Kazakhstan.

[2] The Applicants have raised a number of grounds of review. Having reviewed the record and having considered the submissions of the parties, I find that the determinative issue is the RAD's failure to engage with the Applicants' argument that the agents of persecution had the means to locate the Applicants due to widespread corruption in Kazakhstan.

[3] This issue is reviewable on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[4] Before the RAD, the Applicants asserted that the RPD had erred in finding that there was no evidence to suggest that the agents of persecution had any connections with the police outside of the local village or throughout Kazakhstan, such that they would not have the means to locate the Applicants in the IFA. The Applicants advanced a number of arguments in support of this asserted error, pointing to evidence that the Applicants asserted should have caused the RPD to

conclude that the agents of persecution had the means to locate the Applicants, such as evidence that people in Kazakhstan must register their addresses and evidence that the police are supervised by a single entity at the national level (which leads to the inference that all police in Kazakhstan have access to whatever information about citizens is contained in their database). The RAD addressed this evidence and the Applicants' submissions in relation thereto.

[5] However, the Applicants also pointed to evidence in the National Document Package of widespread corruption by officials in Kazakhstan, including the police. The Applicants asserted that through corruption, the information held by the police regarding the location of the Applicants could become available to the agents of persecution and as such, it was an error for the RAD to conclude that the agents of persecution lacked the means to locate the Applicants.

[6] As the evidence of widespread corruption was squarely before the RAD and expressly relied upon by the Applicants, the RAD was obligated to engage with that evidence and engage with the Applicants' submissions related thereto to determine what impact, if any, it had on the RAD's decision regarding the means of the agents of persecution to locate the Applicants in the IFA [see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at paras 16-17]. However, there is no mention of this evidence or the Applicants' submissions in relation thereto in the RAD's decision. As a result, I find that the RAD's decision does not contain a rational chain of analysis given its failure to engage with the corruption evidence and submissions.

[7] Given the RAD's finding regarding "means", the RAD did not go on to consider whether the agents of persecution had the motivation to search for the Applicants in the proposed IFA. As such, I cannot conclude that the RAD's error would have no determinative impact on its decision. Accordingly, the application for judicial review is granted, the RAD's decision is set aside and the matter shall be sent back for redetermination by a differently-constituted panel of the RAD.

[8] The parties proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-4062-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision of the Refugee Appeal Division dated April 7, 2022 is set aside and the matter shall be remitted to a differently-constituted panel of the Refugee Appeal Division for redetermination.
3. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4062-22

STYLE OF CAUSE: GULAMZHAN TURSUNOV AND KHALOSBAY
DODAYEV v MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 24, 2023

JUDGMENT AND REASONS: AYLEN J.

DATED: MAY 24, 2023

APPEARANCES:

David P. Yerzy FOR THE APPLICANTS

Allison Grandish FOR THE RESPONDENT

SOLICITORS OF RECORD:

David P. Yerzy FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario